

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 201810812	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/14/2018 3:00 PM	Location of Incident: 320 Jay Street [Brooklyn Supreme Court House]	Precinct: 84	18 Mo. SOL 6/14/2020	EO SOL 1/29/2021	
Date/Time CV Reported Sat, 12/15/2018 2:17 PM	CV Reported At: Other City agency	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/31/2018 10:37 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Melissa Napoli	4790	944239	090 DET
2. DT3 Simon Rashid	00173	942412	090 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Melissa Napoli	Abuse: Detective Melissa Napoli attempted to perform a cavity search of § 87(2)(b)	
B.DT3 Simon Rashid	Force: Detective Simon Rashid used physical force against § 87(2)(b)	
C.DT3 Simon Rashid	Force: Detective Simon Rashid used a chokehold against § 87(2)(b)	
D.DT3 Simon Rashid	Force: Detective Simon Rashid restricted § 87(2)(b)'s breathing.	
E.DT3 Melissa Napoli	Force: Detective Melissa Napoli used physical force against § 87(2)(b)	
F.DT3 Simon Rashid	Force: Detective Simon Rashid hit § 87(2)(b) against a wall.	
§ 87(4-b) § 87(2)(g)		
§ 87(2)(g)		

### Case Summary

On December 15, 2018, this complaint was submitted by § 87(2)(b) to the Department of Correction (DOC) Investigation Division via 3-1-1. It was received at the CCRB on December 31, 2018. On January 5, 2019, § 87(2)(b) submitted a handwritten complaint to the DOC. It was received at the CCRB on April 24, 2019.

At approximately 3:00 p.m. on December 14, 2018, § 87(2)(b) was a prisoner in the Brooklyn Supreme Courthouse at 320 Jay Street in Brooklyn. DOC Capt. Kerion Cohall, escorted § 87(2)(b) to a cell in the basement with NYPD Det. Melissa Napoli and Det. Simon Rashid of the 90<sup>th</sup> Precinct Detective Squad so that they could obtain a DNA sample from him (**Allegation A: Abuse of Authority:** § 87(2)(g)). Det. Rashid grabbed § 87(2)(b) by the shoulders, held him in a chair, and grabbed his jaw (**Allegation B: Force:** § 87(2)(g)). Det. Rashid's fingers allegedly reached around § 87(2)(b)'s neck and pressed into his windpipe, making it difficult to breathe (**Allegation C: Force:** § 87(2)(g)) (**Allegation D: Force:** § 87(2)(g)). Det. Napoli grabbed § 87(2)(b) by the jaw (**Allegation E: Force:** § 87(2)(g)). Det. Napoli attempted to press a buccal swab into § 87(2)(b)'s mouth (**within Allegation A**). Det. Rashid allegedly grabbed § 87(2)(b)'s head and struck it against a wall (**Allegation F: Force:** § 87(2)(g)). Det. Rashid and Det. Napoli pushed § 87(2)(b) against the cell wall (**within Allegations B and E**). Capt. Cohall entered the cell and told the officers to let go of § 87(2)(b). She walked him back upstairs into DOC custody. Det. Napoli and Det. Rashid left without further incident.

§ 87(4-b) § 87(2)(g)

The CCRB did not obtain video evidence of this incident. § 87(2)(g)

### Findings and Recommendations

#### **Allegation A – Abuse of Authority: Det. Melissa Napoli attempted to perform a cavity search of § 87(2)(b)**

The following is undisputed: Det. Napoli requested that § 87(2)(b) a prisoner held at Rikers Island, be transported to the Brooklyn Supreme Court on December 14, 2018, to obtain a DNA sample for an ongoing criminal case. On that date, Det. Napoli and Det. Rashid went to the Brooklyn Supreme Court and presented a court order to DOC officers, who presented § 87(2)(b) Det. Napoli, Det. Rashid, and Capt. Cohall of DOC brought § 87(2)(b) to a cell in the basement of 320 Jay Street. Capt. Cohall left the cell. Based on the court order, the detectives intended to get a DNA sample from § 87(2)(b).

ADA Bianco and Det. Napoli separately presented the investigation with the same court order that was presented to DOC prior to the incident (BR 01 and 02). This order granted a request for § 87(2)(b)'s DNA and indicated that reasonable, but not excessive force, may be used to ensure that § 87(2)(b) comply with the court order.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Force: Detective Simon Rashid used physical force against § 87(2)(b)**

**Allegation E – Force: Detective Melissa Napoli used physical force against § 87(2)(b)**

It is undisputed that once the officers were alone with § 87(2)(b) in the cell, Det. Rashid held § 87(2)(b) down in a chair by his shoulders. Det. Napoli and Det. Rashid grabbed § 87(2)(b)'s face. Det. Napoli tried to place a buccal swab into § 87(2)(b)'s mouth for several minutes. § 87(2)(b) struggled against Det. Napoli and Det. Rashid to prevent Det. Napoli from inserting the buccal swab. § 87(2)(b) stood up.

Det. Napoli testified that she believed the officers were permitted to use force because there was a signed court order saying that they could. Det. Rashid's statement was essentially consistent with Det. Napoli's. He believed that he and Det. Napoli were permitted to obtain the DNA by force because a court order had indicated they should.

Capt. Cohall testified that after she left the detectives with § 87(2)(b) she went to her office for five to ten minutes. She returned to the basement and through the walls she could hear § 87(2)(b) yell that he refused to provide his DNA. She reentered the cell and saw Det. Rashid next to § 87(2)(b) who was chest-first against the wall. § 87(2)(b) walked toward Capt. Cohall and the captain escorted § 87(2)(b) upstairs into DOC custody. Her written testimony noted that she did not see Det. Rashid touching § 87(2)(b). § 87(2)(b) did not tell her that he was assaulted by officers.

Over the phone, ADA Bianco stated that he was unaware of any existing order that allowed NYPD officers to obtain the DNA by force (BR 03). He was unaware of an incident in which officers attempted to obtain § 87(2)(b)'s DNA by force. He added that normally DOC employees would take DNA samples forcibly if it were so ordered. To clarify any confusion, ADA Bianco provided the investigation with his template for a force order (BR 04). He provided the investigation with his notes from December 14, 2018, which noted that § 87(2)(b) was not swabbed (BR 05). On December 17, 2019, ADA Bianco made his case file available for review at the Brooklyn DA's office. He stated that no force order was issued in this case, and a review of the case file did not reveal any additional orders (BR 13).

§ 87(2)(b)'s medical records (BR 06) (BR 07) show that on December 15, 2018, he received treatment in DOC custody for neck pain and difficulty in movement of neck. He complained that a Brooklyn detective tried to force him to take an oral swab against his will while he was handcuffed.

As stated above, the officers were in possession of a court order that indicated they could use reasonable, but not excessive force, to ensure that § 87(2)(b) comply with the court order.

Detectives may not use force to collect a DNA Exemplar Suspect Court Ordered Sample. If a person refuses to comply with such a court order, a detective should notify their Detective Bureau supervisor, contact the NYPD Legal Bureau, and request assistance. NYPD Detective Guide Procedure 506-05 (BR 08).

As per the Detective Guide, officers may not use force to collect a court ordered DNA Sample. If a person refuses to comply with such a court order, officers are required to follow a specific protocol that was not followed in this case.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation C – Force: Det. Simon Rashid used a chokehold against § 87(2)(b)**  
**Allegation D – Force: Det. Simon Rashid restricted § 87(2)(b) s breathing.**

§ 87(2)(b) testified that after Det. Rashid pinned him in the chair by holding the back of his neck, Det. Rashid’s fingers reached around § 87(2)(b) s neck and pressed into his windpipe, making it difficult to breathe.

Det. Rashid denied making contact with § 87(2)(b) s neck at any point during the incident. He denied using a chokehold and restricting § 87(2)(b) s breathing. Det. Napoli denied that Det. Rashid held § 87(2)(b) by the back of the neck to keep him seated.

Capt. Cohall stated that by the time she entered the room, she observed § 87(2)(b) against and facing the wall. Det. Rashid stood behind § 87(2)(b) Capt. Cohall did not recall § 87(2)(b) being pressed against the wall. She did not observe any physical contact between officers and § 87(2)(b) § 87(2)(b) She denied seeing Det. Rashid touch § 87(2)(b) s neck.

§ 87(2)(b) s medical records (BR 06 and 07) show that on December 15, 2018, he stated to medical personnel that he had been choked while waiting to enter the Brooklyn Supreme Court. As noted above, they indicate that he had neck pain and difficulty moving his neck in the aftermath of the incident. They do not note any injuries consistent with § 87(2)(b) s breathing being restricted.

§ 87(2)(g)  
[REDACTED]

**Allegation F – Force: Det. Simon Rashid hit § 87(2)(b) against a wall.**

As noted above, it is undisputed that after § 87(2)(b) refused to provide an oral swab, he stood up. Det. Rashid tried to maintain control and pressed him against the cell wall. Capt. Cohall reentered the cell and told the officers to stop. § 87(2)(b) walked toward Capt. Cohall, who escorted him out of the cell. Det. Napoli and Det. Rashid left without further incident.

§ 87(2)(b) testified that after he moved his head back-and-forth to prevent Det. Napoli from inserting the buccal swab, Det. Rashid grabbed him by the head and struck his forehead against the cell wall.

Det. Rashid stated that he pushed § 87(2)(b) s against the cell wall by putting his hands against § 87(2)(b) s back. He described this as a gentle action and denied slamming § 87(2)(b) against the wall. He did not know whether § 87(2)(b) s head touched the cell wall. He did not remember where his own hands were. Det. Rashid pushed § 87(2)(b) against the cell wall to prevent him from falling to the ground.

Det. Napoli stated that she and Det. Rashid held § 87(2)(b) against the cell wall so that she could more easily insert the buccal swab. As he was against the wall, she grabbed § 87(2)(b) s face a tried to push the buccal swab into his mouth. She denied that an officer struck § 87(2)(b) s head against the cell wall.

As noted above, Capt. Cohall testified that she observed Det. Rashid next to § 87(2)(b) who stood facing and against the wall. She did not recall § 87(2)(b) being pressed against the wall.

§ 87(2)(b) s medical records (BR 06 and 07) show that on December 15, 2018, he stated to medical personnel that that detectives pushed his head and face into a wall. They note his complaint of neck pain. They do not note any injuries consistent with § 87(2)(b) s head being struck against a wall.

Det. Rashid stated that he pushed § 87(2)(b) against the wall by putting his hands against § 87(2)(b) s back and pressing him against the cell wall. He described this as a gentle action and denied slamming § 87(2)(b) against the wall. Det. Napoli denied that an officer struck § 87(2)(b) s head against the cell wall. Capt. Cohall stated that she entered after § 87(2)(b) was already against the wall. § 87(2)(b) s medical records did not note injuries consistent with § 87(2)(b) s head being struck against a wall.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 10).
- Det. Napoli has been a member-of-service for twelve years and has been a subject of one CCRB allegation in one prior complaint, which was not substantiated. § 87(2)(g)
- Det. Rashid has been a member-of-service for thirteen years and has been a subject of fourteen CCRB allegations in six prior complaints, none of which were substantiated.

**Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation due to § 87(2)(b) s of injury.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of September 5, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 12).

Squad 6

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date